



February 19, 2002

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## ENGROSSED SENATE BILL No. 412

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DIGEST OF SB 412 (Updated February 19, 2002 12:52 PM - DI 87)

**Citations Affected:** IC 9-13; IC 9-23.

**Synopsis:** Motor vehicle warranty repairs. Authorizes automobile manufacturers or distributors to enter into agreements with their Indiana franchisees to establish uniform warranty reimbursement policies for the performance of warranty repairs by franchisees. Specifies that the definition of distributor or manufacturer does not include a recreational vehicle manufacturer.

**Effective:** July 1, 2002.

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### Kenley, Lewis

(HOUSE SPONSORS — MAHERN, SMITH M, KUZMAN, WHETSTONE)

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January 10, 2002, read first time and referred to Committee on Commerce and Consumer Affairs.

January 31, 2002, amended, reported favorably — Do Pass.

February 4, 2002, read second time, amended, ordered engrossed.

February 5, 2002, engrossed. Read third time, passed. Yeas 48, nays 0.

#### HOUSE ACTION

February 11, 2002, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

February 19, 2002, amended, reported — Do Pass.

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ES 412—LS 7123/DI 96+



February 19, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## ENGROSSED SENATE BILL No. 412

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A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 9-13-2-45 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 45. "Distributor" means  
3 a person, other than a manufacturer or wholesale dealer, who is  
4 engaged in the business of selling motor vehicles to dealers located in  
5 Indiana. The term includes a distributor's branch office or the  
6 distributor's representative. **The term does not include a recreational**  
7 **vehicle manufacturer.**

8 SECTION 2. IC 9-13-2-93.5 IS ADDED TO THE INDIANA CODE  
9 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
10 1, 2002]: **Sec. 93.5. "Line make" means the name given by a**  
11 **manufacturer to a line of motor vehicles to distinguish it as**  
12 **produced or sold by the manufacturer and that may be used and**  
13 **protected as a trademark.**

14 SECTION 3. IC 9-13-2-97 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 97. (a) "Manufacturer"  
16 means, except as provided in subsection (b), a person engaged in the  
17 business of constructing or assembling vehicles, of a type required to

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1 be registered under IC 9-18, at an established place of business in  
 2 Indiana. The term does not include a converter manufacturer **or**  
 3 **recreational vehicle manufacturer.**

4 (b) "Manufacturer", for purposes of IC 9-23, means a person who is  
 5 engaged in the business of manufacturing or assembling **new** motor  
 6 vehicles or major component parts of motor vehicles, or both, and sells  
 7 **new** motor vehicles to dealers, wholesale dealers, distributors, or the  
 8 general public. The term includes the following:

9 (1) A factory branch office of the manufacturer.

10 (2) An authorized representative of the manufacturer.

11 (3) A partnership, a firm, an association, a joint venture, a limited  
 12 liability company, a corporation, or a trust, resident or  
 13 nonresident, that is controlled by the manufacturer.

14 The term does not include a converter manufacturer **or recreational**  
 15 **vehicle manufacturer.**

16 SECTION 4. IC 9-13-2-191.5 IS ADDED TO THE INDIANA  
 17 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 18 [EFFECTIVE JULY 1, 2002]: **Sec. 191.5. "Uniform time standards**  
 19 **manual", for purposes of IC 9-23-3, has the meaning set forth in**  
 20 **IC 9-23-3-0.5.**

21 SECTION 5. IC 9-23-3-0.5 IS ADDED TO THE INDIANA CODE  
 22 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 23 1, 2002]: **Sec. 0.5. As used in this chapter, "uniform time standards**  
 24 **manual", for purposes of IC 9-23-3-14(c), means a schedule**  
 25 **established by a manufacturer or distributor setting forth the time**  
 26 **allowances for the diagnosis and performance of warranty work**  
 27 **and service.**

28 SECTION 6. IC 9-23-3-14 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 14. (a) This section**  
 30 **does not authorize a manufacturer or distributor and its**  
 31 **franchisees in Indiana to establish a uniform hourly labor**  
 32 **reimbursement rate effective for the entire state.**

33 (b) It is an unfair practice for a manufacturer or distributor to fail to  
 34 compensate to a dealer the posted hourly labor rate for the work and  
 35 services the dealer is required to perform in connection with the  
 36 dealer's delivery and preparation obligations under any franchise or fail  
 37 to compensate to a dealer the posted hourly labor rate for labor and  
 38 other expenses incurred by the dealer under the manufacturer's  
 39 warranty agreements as long as the posted rate is reasonable. Judgment  
 40 of the reasonableness includes consideration of charges for similar  
 41 repairs by comparable repair facilities in the local area as well as  
 42 mechanic's wages and fringe benefits.



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(c) A manufacturer or distributor and at least thirty percent (30%) of its franchisees in Indiana of the same line make may agree in an express written contract citing this section to a uniform warranty reimbursement policy to be used by franchisees for the performance of warranty repairs. The contract must include the reimbursement for parts used in warranty repairs or the use of a uniform time standards manual, or both. The allowance for diagnosis within the uniform time standards manual must be reasonable and adequate for the work and service to be performed.

The manufacturer or distributor shall have:

- (1) only one (1) agreement with each line make; and
- (2) a reasonable and fair procedure for franchisees to request a modification or adjustment of a standard included in the uniform time standards manual.

(d) A contract described in subsection (c) must meet the following criteria:

- (1) Establish a uniform parts reimbursement rate that must be greater than the manufacturer's or distributor's nationally established parts reimbursement rate in effect at the time the contract becomes effective. A subsequent contract must include a uniform reimbursement rate that is equal to or greater than the rate in the immediately prior contract.
- (2) Apply to all warranty repair orders written while the agreement is in effect.
- (3) At any time during the period the contract is in effect:
  - (A) be available to any franchisee of the same line make as the franchisees who entered into the contract with the manufacturer or distributor; and
  - (B) be available to the franchisee of the same line make on the same terms as apply to the franchisees who entered into the contract with the manufacturer or distributor.
- (4) Be for a term not to exceed three (3) years.
- (5) Allow any party to the uniform warranty reimbursement policy to terminate the policy with thirty (30) days prior written notice to all parties upon the annual anniversary of the policy, if the policy is for at least one (1) year.
- (6) Remain in effect for the entire life of the original period if the manufacturer and at least one (1) franchisee remain parties to the policy.

(e) A manufacturer or distributor that enters into a contract with its franchisees under subsection (c) may only seek to recover its costs from a franchisee that receives a higher reimbursement

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rate, if authorized by law, subject to the following:

(1) Costs may be recovered only by increasing invoice prices on new vehicles received by the franchisee.

(2) A manufacturer or distributor may make an exception for vehicles that are titled in the name of a purchaser in another state. However, price increases imposed for the purpose of recovering costs imposed by this section may vary from time to time and from model to model and must apply uniformly to all franchisees of the same line make that have requested reimbursement for warranty repairs at a level higher than provided for in the agreement.

(f) A manufacturer or distributor that enters into a contract with its franchisees under subsection (c) shall do the following:

(1) Certify to the bureau under oath, in a writing signed by a representative of the manufacturer or distributor, that at the time the contract was entered into at least thirty percent (30%) of the franchisees of the line make were parties to the contract.

(2) File a copy of the contract with the bureau at the time of the certification.

(3) Maintain a file that contains the information upon which the certification required under subdivision (1) is based for three (3) years after the certification is made.

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SENATE MOTION

Mr. President: I move that Senator Lewis be added as second author of Senate Bill 412.

KENLEY

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 412, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 30.

Page 2, line 31, delete "IC 9-13-2-181.5" and insert "IC 9-13-2-93.5".

Page 2, line 33, delete "181.5. "Trade name"" and insert "**93.5. "Line make"**".

Page 2, line 39, delete "standard" and insert "**standards**".

Page 2, delete line 42.

Page 3, delete lines 1 through 28.

Page 3, line 31, delete "standard" and insert "**standards**".

Page 3, line 32, delete "IC 9-23-3-25(b)," and insert "**IC 9-23-3-14(c),**".

Page 3, line 33, after "manufacturer" insert "**or distributor**".

Page 3, delete lines 35 through 42.

Page 4, delete lines 1 through 6.

Page 4, line 8, after "14." insert "**(a) This section does not authorize a manufacturer or distributor and its franchisees in Indiana to establish a uniform hourly labor reimbursement rate effective for the entire state.**

**(b)**".

Page 4, line 9, delete "reasonably".

Page 4, line 10, after "for" reset in roman "the".

Page 4, line 10, delete "diagnostic".

Page 4, line 11, delete "repair".

Page 4, line 16, reset in roman "Judgment of the reasonableness includes consideration of".

Page 4, reset in roman line 17.

Page 4, line 18, reset in roman "area as well as mechanic's wages and fringe benefits".

Page 4, line 18, delete "The".

Page 4, delete lines 19 through 21.

Page 4, between lines 21 and 22, begin a new paragraph and insert:

**"(c) A manufacturer or distributor and a majority of its franchisees in Indiana of the same line make may agree in an express written contract citing this section to a uniform warranty reimbursement policy to be used by franchisees for the**

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performance of warranty repairs. The contract must include the reimbursement for parts used in warranty repairs or the use of a uniform time standards manual, or both. The allowance for diagnosis within the uniform time standards manual must be reasonable and adequate for the work and service to be performed. The manufacturer or distributor shall have:

- (1) only one (1) agreement with each line make; and
- (2) a reasonable and fair procedure for franchisees to request a modification or adjustment of a standard included in the uniform time standards manual.
- (d) A contract described in subsection (c) must meet the following criteria:
  - (1) Establish a uniform parts reimbursement rate that must be greater than the manufacturer's or distributor's nationally established parts reimbursement rate in effect at the time the contract becomes effective. A subsequent contract must include a uniform reimbursement rate that is equal to or greater than the rate in the immediately prior contract.
  - (2) Apply to all warranty repair orders written while the agreement is in effect.
  - (3) At any time during the period the contract is in effect:
    - (A) be available to any franchisee of the same line make as the franchisees who entered into the contract with the manufacturer or distributor; and
    - (B) be available to the franchisee of the same line make on the same terms as apply to the franchisees who entered into the contract with the manufacturer or distributor.
  - (4) Be for a term not to exceed three (3) years.
  - (5) Allow any party to the uniform warranty reimbursement policy to terminate the policy with thirty (30) days prior written notice to all parties upon the annual anniversary of the policy, if the policy is for at least one (1) year.
  - (6) Remain in effect for the entire life of the original period if the manufacturer and at least one (1) franchisee remain parties to the policy.
- (e) A manufacturer or distributor that enters into a contract with its franchisees under subsection (c) may only seek to recover its costs from a franchisee that receives a higher reimbursement rate, if authorized by law, subject to the following:
  - (1) Costs may be recovered only by increasing invoice prices on new vehicles received by the franchisee.
  - (2) A manufacturer or distributor may make an exception for

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vehicles that are titled in the name of a purchaser in another state. However, price increases imposed for the purpose of recovering costs imposed by this section may vary from time to time and from model to model and must apply uniformly to all franchisees of the same line make that have requested reimbursement for warranty repairs at the prevailing retail price charged by the dealer.

(f) A manufacturer or distributor that enters into a contract with its franchisees under subsection (c) shall do the following:

(1) Certify to the bureau under oath, in a writing signed by a representative of the manufacturer or distributor, that at the time the contract was entered into a majority of the franchisees of the line make were parties to the contract.

(2) File a copy of the contract with the bureau at the time of the certification.

(3) Maintain a file that contains the information upon which the certification required under subdivision (1) is based for three (3) years after the certification is made."

Page 4, delete lines 22 through 42.

Delete pages 5 through 8.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 412 as introduced.)

SERVER, Chairperson

Committee Vote: Yeas 8, Nays 0.

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## SENATE MOTION

Mr. President: I move that Senate Bill 412 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 9-13-2-45 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 45. "Distributor" means a person, other than a manufacturer or wholesale dealer, who is engaged in the business of selling motor vehicles to dealers located in Indiana. The term includes a distributor's branch office or the distributor's representative. **The term does not include a recreational vehicle manufacturer.**".

Page 1, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 3. IC 9-13-2-97 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 97. (a) "Manufacturer" means, except as provided in subsection (b), a person engaged in the business of constructing or assembling vehicles, of a type required to be registered under IC 9-18, at an established place of business in Indiana. The term does not include a converter manufacturer **or recreational vehicle manufacturer.**

(b) "Manufacturer", for purposes of IC 9-23, means a person who is engaged in the business of manufacturing or assembling motor vehicles or major component parts of motor vehicles, or both, and sells motor vehicles to dealers, wholesale dealers, distributors, or the general public. The term includes the following:

- (1) A factory branch office of the manufacturer.
- (2) An authorized representative of the manufacturer.
- (3) A partnership, a firm, an association, a joint venture, a limited liability company, a corporation, or a trust, resident or nonresident, that is controlled by the manufacturer.

The term does not include a converter manufacturer **or recreational vehicle manufacturer.**".

Re-number all SECTIONS consecutively.

(Reference is to SB 412 as printed February 1, 2002.)

KENLEY

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, Ethics and Veterans Affairs, to which was referred Senate Bill 412, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 5, after "assembling" insert "**new**".

Page 2, line 6, after "sells" insert "**new**".

Page 3, line 1, delete "a majority" and insert "**at least thirty percent (30%)**".

Page 4, line 10, delete "the prevailing retail" and insert "**a level higher than provided for in the agreement.**".

Page 4, delete line 11.

Page 4, line 16, delete "a majority" and insert "**at least thirty percent (30%)**".

and when so amended that said bill do pass.

(Reference is to SB 412 as reprinted February 5, 2002.)

KUZMAN, Chair

Committee Vote: yeas 10, nays 0.

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